Construction Labor Unlimited, Inc./ Frank Mercede Jr. Construction Group, Inc. *and* Connecticut Laborers' District Council for its Local Union 665, Laborers' International Union of North America, AFL–CIO. Case 34–CA–5572

September 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On January 27, 1993, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Construction Labor Unlimited, Inc./Frank Mercede Jr. Construction Group, Inc., Stamford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The judge inadvertently referred to a charge previously filed by the Union as Case 35–CA–4966, instead of its correct designation, Case 34–CA–4966.

Chairman Stephens agrees with the result here because he finds this case distinguishable from *Wilson & Sons Heating*, 302 NLRB 802 (1991), enf. denied 971 F.2d 758 (D.C. Cir. 1992), and *Fortney & Weygandt, Inc*., 298 NLRB 863 (1990), in which he dissented. The acceptance agreement here, unlike the letters of assent in those cases, contains its own automatic renewal provision which specifically obligates the Respondent to successor agreements between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Incorporated (AGC), unless timely written notice is given. It is clear, as the judge found, that timely written notice was never given; thus, the Respondent became bound to the terms of the 1991–1993 collective-bargaining agreement between the AGC and the Union.

[2] Contrary to the Respondent's assertion, Member Devaney's and Member Raudabaugh's finding that the Respondent is bound, pursuant to the automatic renewal clause of the 1989–1991 collective-bargaining agreement, to a successor agreement is not inconsistent with the principles announced in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir.), cert. denied 488 U.S. 889 (1988). The renewal clause provides that a party seeking to terminate the agreement must ''give[] notice in writing to the other party of its intention . . . and request[] that negotiations be entered into for a successor agreement.'' Even assuming arguendo that the renewal clause imposes on the parties a continuing bargaining obligation after the agreement's termination date, as the Respondent contends, nothing in *Deklewa* precludes the parties from voluntarily entering into such an agreement. Moreover, Members Devaney and Raudabaugh note that the Union never sought to enforce any such bargaining obligation; instead, the Respondent became bound to the successor agreement based on the notice sent by the Union, prior to the contract's expiration date, pursuant to the renewal clause, and on the Respondent's failure to send any timely notice of termination of its own.

Thomas E. Quigley, Esq., for the General Counsel.
Michael N. LaVelle (Pullman & Comley), of Bridgeport, Connecticut, for the Respondent.
Michael S. Bearse, Esq., of Providence, Rhode Island, for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. Respondents Construction Labor Unlimited, Inc. (Construction), and Frank Mercede Jr. Construction Group, Inc. (Mercede), admit that they have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises with each other; have provided services to each other; have provided services for the same customers; have interchanged personnel with each other; have shared common facilities and telephones; and have held themselves out to the public as a single integrated business enterprise. However, they do not agree that they are both bound by a collective-bargaining agreement between the Connecticut Laborers District Council of the Laborers International Union of North America, AFL–CIO (Council), and the Labor Relations Division of the Associated General Contractors of Connecticut, Incorporated (AGC). Construction admits that it is, but Mercede contends that it is a nonunion double-breasted operation and not required to bargain collectively with the Council for its Local Union 665, Laborers' International Union of North America, AFL–CIO (Local). It is that failure to bargain, the failure to continue in effect the collective-bargaining agreement, and the refusal to supply certain information essential to bargaining that caused the issuance of the complaint herein under Section 8(a)(5) and (1) of the National Labor Relations Act.[1]

Jurisdiction is admitted. Respondents, both Connecticut corporations with offices and places of business in Stamford, Connecticut, and at various jobsites in and around Connecticut, have been engaged as contractors in the building and construction industry. During the year ending February 29, 1992, Respondents, collectively and individually, provided services valued in excess of $50,000 for the city of Bridgeport, Connecticut, which purchased and received at its facilities goods valued in excess of $50,000 directly from points outside Connecticut and is directly engaged in interstate commerce. I conclude, as Respondents admit, that they, collectively and individually, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude, as Respondents admit, that the Local and the Council (both collectively referred as the Union) are labor organizations within the meaning of Section 2(5) of the

[1] The relevant docket entries are as follows: The Union filed its unfair labor practice charge on February 10, 1992, and amended it on March 26, the same date that the complaint issued. The hearing was held in Hartford, Connecticut, on August 19, 1992.

Act. Council is an association composed of various constituent labor organizations, including Local 665, and exists for the purpose of representing such constituent labor organizations in dealing with employers, such as Respondents, concerning labor disputes and in bargaining collectively with employers regarding wages, rates of pay, hours, and other terms and conditions of employment.

The AGC has been an organization composed of employers engaged in the construction industry, and which exists for the purpose, among other things, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Council. About August 1, 1986, Construction granted recognition to the Union as the exclusive collective-bargaining representative of the following unit, which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All laborers employed by Construction, excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

That recognition resulted from Construction's execution of acceptance agreements on August 1, 1986, and in or about late June 1987, whereby it agreed to accept and approve the 1984–1987 and 1987–1989 collective-bargaining agreements between the Council and the AGC and to be bound by all future agreements between the Council and the AGC, unless timely notice was given, without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which, dated April 1, 1991, is effective by its terms for the period from April 1, 1991, through March 31, 1993. For the period from August 1, 1986, to March 31, 1993, and year to year thereafter, unless timely notice is given, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the above-described unit.

Respondents made an attempt to live within the teaching of *South Prairie Constr. v. Operating Engineers Local 627*, 425 U.S. 800 (1976), which instructs that in the construction industry, an employer may operate two separate entities, one as a union firm, and one nonunion, providing that there is a complete separation of the employing entities and that there can be no finding that the employees of both constitute a single appropriate bargaining unit. Unfortunately, Construction and Mercede did not remain separate. During the summer of 1990, Construction was operating as a subcontractor on a school building project in Bridgeport, Connecticut, the general contractor of which was Mercede. Anthony Gaglio, a supervisor of both Respondents, but then as general superintendent of Mercede,[2] hired laborers from the Union's hiring hall for employment by Construction. To appease the Mayor of Bridgeport, Gaglio also hired Angel Llera, not from the Union's hiring hall, to work with the union laborers, despite the fact that Llera did not belong to the Union. The Union filed a grievance on August 24, 1990, complaining that Construction had violated the collective-bargaining agreement's exclusive hiring hall provision. (Later, the Union learned that Llera had been transferred to Mercede's payroll.)

That same month, Gaglio, again in his position as general superintendent of Mercede, decided to fire the union shop steward on Construction's payroll and replace him with an employee from another jobsite. His letter so notifying Ron Nobili, the Union's business agent, was on Mercede's letterhead. Nobili replied to Gaglio on August 13, noting that the Union had no agreement with Mercede. That was followed by Nobili's letter to Construction on August 24, asking it to answer a lengthy questionnaire (attached as ''Appendix A'') about the relationship of Construction and Mercede which Nobili represented was ''relevant to the union's performance of its function as the exclusive collective bargaining representative of the employees in the unit.'' He threatened that the failure to answer the questionnaire would lead to the filing of charges under Section 8(a)(5) and (1) of the Act. When Construction replied to only 2 of 79 questions, the Union's attorney wrote on September 21 that the information was necessary to determine whether both Employers were sufficiently related as to be bound by Construction's agreements. Because Construction did not answer any of the remaining questions, the Union filed a charge in Case 35–CA–4966, and a complaint issued on January 24, 1991, alleging that Respondents constituted a single employer, that only one unit was appropriate, and that both Respondents violated the Act by failing to apply Construction's agreement to Mercede's employees, by discharging the union steward, and by refusing to answer the questionnaire.

The Board proceeding caused an angry response, but the parties dispute which of four letters were sent,[3] and by whom, and whether any of them, if sent, was effective in terminating the collective-bargaining agreement, under which Construction was bound, which agreement expired on March 31, 1991, and was succeeded by a new 2-year agreement, which expires by its terms on March 31, 1993. The letter that Nobili recalled receiving was on the letterhead of Mercede, was dated January 31, 1991, and was signed by Frank Mercede III, Construction's president (but also Mercede's treasurer and director). It stated:

> Due to the unnecessary and continued unjustified harassment by several, actually the business agent from Bridgeport, I have made a business decision to withdraw from the Laborers Collective Bargaining Agreements in Connecticut.
>
> This will serve as official notification.

This letter was read by Dominick Lopreato, the Council's business manager, at a union meeting in February. Nobili specifically recalled that this was the letter that was read, first, because he was the business agent from Bridgeport and the letter was directed at him, and, second, because the letter came from Mercede, which had no contract with the Union.

Even assuming that the above letter was an attempt to give notice that Construction was terminating its agreement at its expiration at the end of March, Construction nonetheless continued to employ union laborers and make contributions on their behalf to various fringe benefit plans, as required by the collective-bargaining agreement, for April, May, and

[2] When he testified, he was an employee of only Construction.

[3] The letters are very much at issue and all will be quoted in this decision. For ease of reference, I have numbered them ''1,'' ''2,'' ''3,'' and ''4.''

June.[4] In August, on the eve of the hearing in Case 35–CA–4966, the parties settled. Respondents agreed to answer the questionnaire, to pay backpay, and to make contributions to the fringe benefit plans for Llera and other employees for the period from April 1, 1989, through March 31, 1991.

A number of incidents occurred late that summer or early fall. First, the Union learned that Mercede was offering individual insurance benefits to its employees. Second, the last contributions that Construction paid to the benefit plan, for July, was paid on September 12; and there was a strange conversation between Gaglio and Nobili, at least so Gaglio testified, in which Gaglio told Nobili that all of Construction's employees had been transferred to the payroll of Mercede, and Nobili replied that the funds could no longer accept contributions to the plans. That really is most unlikely, not only because I distrust Gaglio, but also because Nobili was not one to release his hold on any employer. It is much more probable, and I find, as Nobili testified, that he told Gaglio that the Union still considered Construction to be bound by the agreement; but if Construction was no longer a signatory, then the funds could not legally accept the contributions. In any event, on October 1, Mercede advised all its employees that the Union would not accept contributions on their behalf for the health and welfare plans and offered them a choice between its own two health plans.

On November 15, 1991, the Regional Director approved the settlement agreement in the earlier unfair labor practice case, but Respondents delayed providing the information requested in the questionnaire. Finally, a meeting was arranged for February 6, 1992, at Respondents' office in Stamford, at which Respondents announced to the Union that they had no obligation to produce any information because Construction was not bound by any contract, having submitted a timely withdrawal letter (2) on January 31, 1991, which (like letter 1) was signed by Frank Mercede III, but (unlike letter 1) was on Construction's letterhead. It stated:

> After careful review of our situation with the Laborer's Local 665, we have decided to withdraw from the Connecticut Laborer's District Council.
>
> We feel that it is unfortunate that we cannot resign this agreement due to one local out of ten within the state. Please let this letter serve as formal notice of our withdrawal.
>
> If you should have any questions please do not hesitate to contact us.

Nobili testified that it was at this meeting that he learned that all of Construction's employees had been transferred to the payroll of Mercede. Even so, he contended that all of Mercede's employees were covered by the master agreement, because Mercede was the same as Construction.

Whether Construction was no longer bound by any agreement depends on whether it gave a timely notice that effectively terminated the collective-bargaining agreement. The determination of which of the above two notices (letters 1 and 2) was sent is made more difficult because additional testimony revealed that two more letters were allegedly sent. A third letter, also dated January 31, 1991, was signed by Frank Mercede, Jr. This one, on the letterhead of Mercede, stated:

> As you know, we have many, many problems with your business agent for the Bridgeport area, Mr. Ron Nobili. Now, I don't profess to have done everything right however, Mr. Nobili's tactics of constant harassment (going exactly by the book) are intolerable, unnecessary and unreasonable, especially in todays very difficult, competitive economy.
>
> I have been responsible for hiring union laborers for the past 25 years, in the amount of approximately 50 to 250 per year (Dominick, I started out myself as a member of Labors Union 449). I have worked all over the state and in Westchester and have never had the problems that I am having in Bridgeport with Mr. Nobili. Unless the harassment stops immediately, I will have no other choice but to cease being a signatory of the Laborers Agreement.
>
> If you have any questions, please do not hesitate to call.

The final letter, written on Construction's letterhead, is dated March 1, 1991. This one was signed by Frank Mercede III and stated:

> Due to the unnecessary and continued unjustified harassment by several, actually the business agent from Bridgeport, I have made a business decision to withdraw from the Laborers Collective Bargaining Agreements in Connecticut.

One of these letters has to be a fake. Letters 3 and 1 are inconsistent. Both were written on the letterhead of Mercede, yet one (letter 1) withdraws from the agreement, and the other (letter 3) merely threatens withdrawal. Letters 2 and 4 are essentially the same: they are both withdrawals on the letterhead of Construction, yet they are written more than a month apart. On their face, something is amiss. Respondents had to come up with a very good explanation to make them anything other than fabricators, which manufacture phony documents in order to win their case. Respondents did not. First, neither Frank Jr., who was present at the hearing, nor Frank III testified. They obviously had a huge amount of explaining to do, and it is just as well that they did not. Second, the one who took the stand, Gaglio, was outrageous. He said, at least on one occasion, that he was standing near where Frank III dictated the letters, and he saw them being signed by Frank III. Later, when faced with seemingly different signatures on the letters, he denied that he saw them signed. He testified that letter 1 went out first; and, once Respondents were advised that it was written on the letterhead of Mercede, which was not bound by any contract, letter 2 was written. Later, faced with the fact that both are dated the same day, he denied that he ever said such a thing. I find him unworthy of belief. I find that letter 2 was a fraud, prepared to deceive the Union and offered in this proceeding to defraud the Board in its findings of fact. The letter represents no mere misunderstanding which witnesses often are guilty of. This is a purposeful fraud; and, because it is, I do not credit anything else that Gaglio, who had to be privy to the

[4] The forms that accompanied the payments were sent by Construction (but bear the signature of a staff accountant of Mercede) and acknowledge that: ''This firm is a party to a Collective Bargaining Agreement which provides for payments by Employer to the Fund(s) specified in this report and provides that he is bound by the terms and conditions of the Trust Agreement(s) governing the Fund(s) and the rules adopted pursuant thereto.''

attempted deception, testified to, except as it was confirmed or corroborated by a credible witness. Furthermore, I credit the union witnesses, including Attorney Michael Bearse, who testified that they had never seen letter 2 until February 6, 1992, a little more than a year after it was dated.

Letter 3 merely threatens that Mercede Jr. would cease being a signatory to an agreement, so that had no legal effect. That leaves letters 1 and 4. Letter 1 is arguably ineffectual because it was typed on a Mercede letterhead, and Mercede was not a signatory to any agreement. The Union knew, however, when it received letter 1, that it was receiving a letter from Construction. This proceeding is an attempt by the Union, in part, to hide behind the fact that the letter was sent on the wrong letterhead. But there could be no doubt what the letter intended. Nobili knew that he was the one who was giving Construction trouble, and it must have been Construction that wanted to get out of the agreement, not Mercede, which did not have an agreement. Indeed, the Union knew something about the relationship between Construction and Mercede. That was the reason for the earlier filing of the unfair labor practice charge against both Construction and Mercede and the reason that the Union was trying to obtain more information through its questionnaire. Therefore, even on the wrong letterhead, the notice was sufficient to advise the Union that Construction was trying to extricate itself from the collective-bargaining agreement.

Letter 4 was mailed by Construction no earlier than March 1. Its notice was too late, only 30 days before the collective-bargaining agreement's expiration. All parties agree that timely notice means 60 days' notice prior to March 31, 1991, because that is what the collective-bargaining agreement states. That agreement provides:

> At the expiration of this Agreement as herein provided, the same shall continue to be effective from year to year unless either party, at least sixty (60) days prior to March 31, 1991 or March 31st of any year thereafter, gives notice in writing to the other party of its intention to terminate this Agreement and requests that negotiations be entered into for a successor agreement and, in the event that the parties hereto cannot reach an agreement at least thirty (30) days prior to March 31st of any year, such party shall give notice of the failure to reach such agreement to the U.S. Federal Mediation Service and the Connecticut Board of Conciliation and Arbitration.

Letter 1 was also served too late. Although January 31, 1991, appears to be within 60 days of March 31, February had only 28 days, so the letter was late by one day. Accordingly, all the letters, served or not, legitimate or not, fake or not, were late.

In addition, all the letters did not seek to terminate the agreement. Construction was unclear what it wanted to do, either escape from the agreement or cure Nobili of his technical interpretations of the agreement. Letter 1 stated that Construction withdrew from the agreement, a statement that it was no longer bound by the agreement. Letter 3, written the same day and signed by the same person, merely threatened to withdraw from the agreement. Letter 4, written a month later, was a copy of letter 1. However, within months, after the agreement had expired, Construction was still employing union members and making contributions to the union funds on their behalf. That conduct is inconsistent with the reading of any of the letters that Construction had intended to terminate the agreement. I conclude, for this reason, that Construction did not.

The final issue involves the effect of Construction's failure to terminate the agreement timely. Construction became bound by the collective-bargaining agreement by signing what the parties refer to as a ''me too'' agreement, in which it stated that it had reviewed, accepted, and approved the collective-bargaining agreement between the Council and the AGC, and further:

> The undersigned Employer also accepts and agrees to be bound by all of the terms and conditions of any successor agreement(s) to the foregoing Agreements which may be entered into subsequent to the date hereof, unless the undersigned Employer or the Union gives timely, written notice to the other party of its intention to change or terminate a particular collective bargaining agreement in accordance with its terms.[5]

The General Counsel contends that Construction was bound for the term of the successor agreement, as the ''me too'' agreement clearly states, in which event it was bound for 2 years. Respondents argue that Construction was bound for only 1 year, relying on the ''Duration of Agreement'' provision of the collective-bargaining agreement. However, that provision speaks only of the situation in which one of the parties to that agreement, the AGC or the Council, fails to notify the other that it wished to terminate the agreement. In that event, the agreement continues in force for another year. However, the ''me too'' agreement provides that, if Construction does not give the required notice, it becomes bound by the terms of any successor agreement that is entered into. In this instance, the parties to the master agreement entered into a 2-year agreement, by which Respondents are now bound. Had those parties entered into a 3-year agreement, Respondents would have been bound for 3 years. Had they entered into a 1-year agreement, Respondents would have been bound for only 1 year. Had the parties given no notice to each other, so that the collective-bargaining agreement automatically renewed itself for one year, and Construction had not timely notified the Union, Respondents would have been bound by the agreement for only 1 year. The clauses of the collective-bargaining and ''me too'' agreements are neither irreconcilable or contradictory or unlawful, as Respondents contend. *E. L. Wagner Co.*, 294 NLRB 493 (1989).

About October 1, 1991, Respondents unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement. Those terms and conditions are mandatory subjects for the purpose of collective bargaining. I conclude that Respondents failed to bargain collectively and in good faith with the Union in violation of Sections 8(a)(5) and (1) and 8(d) of the Act. In so doing, I conclude that Respondents constitute a single employer, because an employer-wide unit is appropriate. At least at the beginning, Mercede employed one laborer, Llera, while Construction employed other laborers. All laborers were supervised by the same su-

[5] This is a quotation from the second of the two ''me too agreements'' signed by Construction.

perintendent, presumably had the same skills, and performed the same services. When the dealings between Respondents and the Union became more strained, Llera was transferred from Construction's payroll to Mercede's and then all the remaining laborers were similarly transferred. Thus, there was no separate double-breasted operation here. Rather, it was wholly integrated. The collective-bargaining agreement thus applies to the laborers employed by Mercede, and the relief granted flows against both Employers.

In addition, the questionnaire to Construction, sent on December 18, 1991, has never been answered, although the Union made demands orally for answers to the questionnaire on February 6 and March 6, 1992. I find that the information requested is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. The transfer of Llera from the payroll of Construction to that of Mercede and the relationship of Gaglio to both Employers were enough to make relevant the Union's search for information.

Respondents contend that their admission of many of the complaint's allegations involving the relationship between Construction and Mercede has obviated the need to answer the questionnaire. However, the admissions are conclusory; and the Union is entitled to information that will permit it to pursue other avenues in its attempt to link the two Employers. The questionnaire also asks for much information that is not encompassed within the scope of the admissions. Finally, Respondents admitted the allegations only at the hearing, 9 months after the Union demanded answers to the questionnaire. Respondents cite no authority permitting a waiver of their lengthy delay. I conclude that, since February 6, 1992, Respondents have failed and refused to furnish the Union the requested information, in violation of Section 8(a)(5) and (1) of the Act.[6]

The unfair labor practices found herein, occurring in connection with Respondents' businesses, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall order Respondents to give full force and effect, retroactive to August 10, 1991, to the collective-bargaining agreement between the Council and the AGC, dated April 1, 1991, and until the agreement expires. Respondents must make whole those former and current bargaining unit employees who worked for Respondents for any loss of wages and benefits they may have incurred as a result of Respondents' failure to apply the collective-bargaining agreement to them, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent must also reimburse the contractually established benefits funds for contributions not paid on behalf of the employees, with interest computed as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Respondents shall also reimburse employees for the costs they incurred, such as payments to health care providers and third-party insurers, because of Respondents' failure to make contributions to the contractual health and welfare funds on their behalf. I recommend that Respondents should be required to answer the questionnaire that the Union requested, if the Union should so request and if the Region's compliance officer deems that the material is still relevant. It may be that the Union's need for the information will be satisfied by the finding in this decision that Respondents constitute a single employer. Finally, in view of the nature of employment in the construction industry, I find that posting notices at Respondents' places of business is inadequate to inform their present and former employees of their rights under this decision. Therefore, I shall order that, in addition to posting the attached notice at their places of business, Respondents post copies of the notice at their jobsites and furnish signed copies of the notice to the Union for posting at the Union's office and meeting places.

On these findings of fact and conclusions of law and the entire record in this proceeding,[7] including my observation of the demeanor of the witnesses as they testified, and my consideration of the briefs filed by the General Counsel and Respondents, I issue the following recommended[8]

ORDER

The Respondents, Construction Labor Unlimited, Inc. Frank Mercede Jr. Construction Group, Inc. Stamford, Connecticut, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to recognize and bargain collectively in good faith with Connecticut Laborers District Council for its Local Union 665, Laborers' International Union of North America, AFL–CIO (Union), as the exclusive bargaining representative of their employees in the following appropriate unit, and failing or refusing to honor collective-bargaining agreements applicable to those employees:

> All laborers employed by Respondents, excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Failing or refusing to provide information that is necessary for and relevant to the Union's performance of its du-

[6] I express no opinion about the rather unusual nature in which the issue regarding the demand for information has been brought for disposition. Normally, the General Counsel would have sought to set aside the earlier settlement agreement. Here, he relies on a new demand, the same as the old, which raises problems under Sec. 10(b), yet have not been pressed by Respondent. The issue was originally raised by a timely filed charge in Case 35–CA–4966. If the General Counsel had sought to set aside the settlement agreement in that case, there would have been no 10(b) issue, so the whole matter may be moot.

[7] The General Counsel's unopposed motion to correct the record to reflect accurately R. Exhs. 3 and 4 is granted. ''Attachment A'' to the complaint is also amended by adding to it the second page containing questions 7 through 13.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ties as the collective-bargaining representative of Respondents' employees in the above unit.

(c) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Maintain and give full effect to the 1991–1993 collective-bargaining agreement between the Council and the AGC, retroactive to August 10, 1991, including but not limited to: (1) making whole all of Respondents' unit employees for any loss of wages and benefits they may have incurred because of Respondents' failure to apply or maintain the established terms and conditions of such agreement; (2) making required payments to the various trust funds established by the collective-bargaining agreement; and (3) reimbursing their employees for any expenses they incurred by reason of Respondents' failure to make such contributions; all as set forth in the remedy section of this decision.

(b) On request of the Union, answer the questionnaire that the Union sent to Respondents on December 18, 1991.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at their places of business and at each of their jobsites copies of the attached notice marked ''Appendix B.''[9] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by Respondents' authorized representatives, shall be posted by Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director for Region 34 sufficient copies of the notice for posting by the Union, if it is willing, at its office and meeting halls, including all places where notices to members are customarily posted.

(f) Notify the Regional Director for Region 34 in writing within 20 days from the date of this Order what steps Respondents have taken to comply.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX A

1. Describe the type of business in which your company engages. Describe the type of business in which the non-union company engages.

2. Describe the geographic area in which your company does business. Describe the geographic area in which the non-union company does business.

3. State the business address(es) and identify all office locations of your company. State the business address(es) and identify all office locations of the non-union company.

4. Identify your company's post office box(es) by number and location. Identify the non-union company's post office box(es) by number and location.

5. Identify your company's business phone number(s) and directory listing(s). Identify the non-union company's business phone number(s) and directory listing(s).

6. Identify the banking institution, branch location, and account number of your company's bank account(s). Identify the banking institution, branch location, and account number of your company's bank account(s).

7. Identify the banking institution, branch location, and account number of your company's payroll account(s) not identified above. Identify the banking institution, branch location, and account number of the non-union company's payroll account(s) not identified above.

8. Identify where and by whom your company's accounting records are kept. Identify where and by whom the non-union company's accounting records are kept.

9. Identify your company's principal accountant. Identify the non-union company's principal accountant.

10. Identify where and by whom your company's corporate records are kept. Identify where and by whom the non-union company's corporation records are kept.

11. Identify where and by whom your company's corporate records are kept. Identify where and by whom the non-union company's corporation records are kept.

12. Identify your company's principal bookkeeper. Identify the non-union company's principal bookkeeper.

13. Identify your company's principal payroll preparer. Identify the non-union company's principal preparer.

14. Identify your company's contractor license number for states where it does construction business. Identify the non-union company's contractor license number for states where it does construction business.

15. Identify the carrier and policy number for your company's workers compensation insurance. Identify the carrier and policy number for the non-union company's workers compensation insurance.

16. Identify the carrier and policy number for your company's other health insurance program(s). Identify the carrier and policy number for the non-union company's other health insurance program(s).

17. (a) Identify your company's federal taxpayer identification number. Identify the non-union company's federal taxpayer identification number. (b) Identify where and by whom your company's federal tax returns are kept. Identify where and by whom your company's federal tax returns are kept.

18. (a) Identify your company's other federal or state taxpayer identification numbers. Identify the non-union company's other federal or state taxpayer identification numbers.

(b) Identify where and by whom your company's other federal or state tax reports are kept. Identify where and by whom the non-union company's other federal or state tax reports are kept.

19. Identify amount(s) involved, reason(s) for, and date(s) of transfer of any funds between your company and the non-union company.

20. Identify source(s) and amount(s) of your company's line(s) of credit. Identify source(s) and amount(s) of the non-union company's line(s) of credit.

21. Identify amount(s) involved and date(s) when your company has operated its capital with a guarantee of performance by the non-union company.

Identify amount(s) involved and date(s) when the non-union company has operated its capital with a guarantee of performance by your company.

22. Identify business(es) to whom your company rents, leases, or otherwise provides office space.

Identify business(es) to whom the non-union company rents, leases, or otherwise provides office space.

23. Identify the calendar period and terms by which your company provides office space to the non-union company, or is provided with office space by the non-union company.

24. Identify your company's building and/or office suppliers. Identify the non-union company's building and/or office supplies [sic].

25. Identify by item(s) purchased, date(s) of purchase, and dollar volume of purchase(s) those building and/or office supplies not purchased separately by your company and the non-union company.

26. Identify business(es) that use your company's (a) tools or (b) equipment. Identify business(es) that use the non-union company's (a) tools or (b) equipment.

27. Identify business(es) to whom your company sells, rents, or leases its

(a) operating equipment (b) office equipment, (c) construction equipment, or (d) tools. Identify business(es) to whom the non-union company sells, rents, or leases its (a) operating equipment (b) office equipment (c) construction equipment or (d) tools.

28. Identify business(es) from whom your company buys, rents, or leases its equipment. Identify business(es) from whom the non-union company buys, rents, or leases its equipment.

29. Identify those equipment transactions that your company arranges by written agreement. Identify those equipment transactions that the non-union company arranges by written agreement.

30. Regarding equipment transactions between your company and the non-union company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.

31. Regarding equipment transactions between your company and businesses separate from the non-union company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.

32. Regarding equipment transactions between the non-union company and businesses separate from the non-union company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.

33. Identify those of the following services that are provided to the non-union company by or at your company.(a) administrative(b) bookkeeping(c) clerical(d) detailing(e) drafting(f) engineering(g) estimating(h) managerial(i) patternmaking(j) sketching(k) other

34. Identify those of the following services that are provided to the your company by or at the non-union company.(a) administrative(b) bookkeeping(c) clerical(d) detailing(e) drafting(f) engineering(g) estimating(h) managerial(i) patternmaking(j) sketching(k) other

35. Identify where your company advertises for customer business. Identify where the non-union advertises for customer business.

36. Identify your company's customers. Identify the non-union company's customers.

37. Identify customers your company has referred to the non-union company. Identify customers the non-union company has referred to your company.

38. What customers of the non-union company are now or were formerly customers for your company.

39. Regarding customers identified above as common to your company and the non-union company, state the calendar period and dollar volume of work performed for the customer by your company. Regarding customers identified above as common to your company and the non-union company, state the calendar period and dollar volume of work performed for the customer by the non-union company.

40. State the dollar volume of business per job performed by your company. State the dollar volume of business per job performed by the non-union company.

41. Does your company negotiate jobs to obtain work? Does the non-union company negotiate jobs to obtain work?

42. Does your company bid jobs to obtain work? Does the non-union company bid jobs to obtain work?

43. Identify those persons who bid and or negotiate your company's work. Identify those persons who bid and or negotiate the non-union company's work.

44. State the dollar volume minimum and or maximum (if any) as established by law or regulation, that your company may bid on public works projects. State the dollar volume minimum and or maximum (if any) as established by law or regulation, that the non-union company may bid on public works projects.

45. Identify by customer, calendar period, and dollar volume any job(s) on which your company and the non-union company have bid competitively.

46. Identify by customer, calendar period, and dollar volume any work which your company has subcontracted to, or received by subcontract from the non-union company.

47. Identify subcontract work arranged by written agreement between your company and the non-union company.

48. State the reason for each subcontract let by your company. State the reason for each subcontract let by the non-union company.

49. Identify by customer, calendar period, and dollar volume any projects on which your company has succeeded, or been succeeded by, the non-union company.

50. Identify work your company performs on the non-union company's products. Identify work the non-union company performs on your company's products.

51. Identify where your company advertises for employee hires. Identify where the non-union company advertises for employee hires.

52. Identify by job title or craft position the number of employees employed by your company per pay period. Identify by job title or craft position the number of employees employed by the non-union per pay period.

53. Identify the skills that your company's employees possess. Identify the skills that the non-union company's employees possess.

54. Identify where your company's employees report for work. Identify where the non-union company's employees report for work.

55. Identify by job title or craft position and respective employment dates those employees of your company who are or have been employees at the non-union company.

56. Identify by job title or craft position and respective employment dates those employees of the non-union company who are or have been employees at your company.

57. Identify by job title or craft position and transfer dates those employees otherwise transferred between your company and the non-union company.

58. Identify projects of each company on which these employees were working at the time of the transfer.

59. Identify your company's (a) supervisors, (b) job superintendents, and (c) forepersons or other supervisory persons with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct employees , or to adjust their grievances, or effectively to recommend such action. Identify the non-union company's (a) supervisors, (b) job superintendents, and (c) forepersons or other supervisory persons with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct employees , or to adjust their grievances, or effectively to recommend such action.

60. Regarding those supervisory persons described above as common to your company and the non-union company, identify the period(s) of employment with each company.

61. Identify your company's personnel ever authorized to supervise the non-union company's employees. Identify the non-union company's personnel ever authorized to supervise your company's employees.

62. Identify by project involved, personnel employed, and date of event, any occasion when your company's personnel performed a supervisory function for the non-union company. Identify by project involved, personnel employed, and date of event, any occasion when the non-union company's personnel performed a supervisory function for your company.

63. Identify your company's managerial personnel having authority to formulate and effectuate management policies or otherwise able to recommend or to exercise discretionary action within or even independently of established policy. Identify the non-union company's managerial personnel having authority to formulate and effectuate management policies or otherwise able to recommend or to exercise discretionary action within or even independently of established policy.

64. Identify your company's representatives who have authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline supervisory personnel, or responsible to direct supervisory personnel, or to adjust their grievances, or effectively to recommend such action. Identify the non-union company's representatives who have authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline supervisory personnel, or responsible to direct supervisory personnel, or to adjust their grievances, or effectively to recommend such action.

65. Identify your company's representatives otherwise actively involved with day-to-date [sic] management or operations. Identify the non-union company's representatives otherwise actively involved with day-to-day management or operations.

66. Identify by title and respective dates of employment those managerial personnel of your company ever employed by the non-union company. Identify by title and respective dates of employment those managerial personnel of the non-union company ever employed by our [sic] company.

67. Describe your company's compensation program including employee wage rates. Describe the non-union company's compensation program including employee wage rates.

68. Describe your company's fringe benefit benefits program. Describe the non-union company's fringe benefits program.

69. Describe your company's labor relations policy. Describe the non-union company's labor relations policy.

70. Identify your company representative(s) who establish or otherwise control labor relations policy. Identify the non-union company representative(s) who establish or otherwise control labor relations policy.

71. Identify your company's labor relations representative(s). Identify the non-union company's labor relations representative(s).

72. Identify your company's legal counsel on labor relations matters. Identify the non-union company's legal counsel on labor relations matters.

73. Identify your company's membership status in the Associated General Contractors. Identify the non-union company's membership status in the Associated General Contractors.

74. Identify your company's membership status in any other employer association. Identify the non-union company's membership status in any other employer association.

75. Identify your company's officers. Identify the non-union company's officers.

76. Identify your company's directors. Identify the non-union company's directors.

77. Identify place(s) and date(s) of your company's directors meetings. Identify place(s) and date(s) of the non-union company's directors meetings.

78. Identify your company's owners and/or stockholders. Identify the non-union company's owners and/or stockholders.

79. Identify the ownership interest held among your company's owners and/or stockholders. Identify the ownership interest held among the non-union company's owners and/or stockholders.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail or refuse to recognize and bargain collectively in good faith with Connecticut Laborers District Council for its Local Union 665, Laborers' International Union of North America, AFL–CIO (Union), as the exclusive bargaining representative of our employees in the following appropriate unit, and fail or refuse to honor collective-bargaining agreements applicable to those employees:

> All laborers employed by Construction Labor Unlimited, Inc., and Frank Mercede Jr. Construction Group, Inc., excluding all other employees, office clerical em-

ployees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT fail or refuse to provide information that is necessary for and relevant to the Union's performance of its duties as the collective-bargaining representative of our employees in the above appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL maintain and give full effect to the 1991–1993 collective-bargaining agreement between the Connecticut Laborers District Council of the Laborers International Union of North America, AFL–CIO and the Labor Relations Division of the Associated General Contractors of Connecticut, Incorporated, retroactive to August 10, 1991, including but not limited to: (1) making whole all of our unit employees for any loss of wages and benefits they may have incurred because of our Respondents' failure to apply or maintain the established terms and conditions of such agreement; (2) making required payments to the various trust funds established by the collective-bargaining agreement; and (3) reimbursing our employees for any expenses they incurred by reason of our failure to make such contributions.

WE WILL on request of the Union, answer the questionnaire that the Union sent to us on December 18, 1991.

CONSTRUCTION LABOR UNLIMITED, INC./
FRANK MERCEDE JR. CONSTRUCTION GROUP,
INC.